

Ms. R.M. "Johnnie" Burton
Director
Minerals Management Service
Department of the Interior
Washington, D.C. 20240

Dear Ms. Burton:

Thank you for your letter to Secretary Carlos M. Gutierrez, regarding suggestions that will help the Minerals Management Service (MMS) develop its 5-Year Outer Continental Shelf (OCS) oil and gas leasing program for 2007-2012. On behalf of the National Oceanic and Atmospheric Administration (NOAA), NOAA's National Ocean Service is responding to your letter.

In addition to MMS' responsibility under the OCS Lands Act to develop the 5-Year leasing program, the Energy Policy Act of 2005 (Pub. L. No. 109-58) (EPA2005) mandates new programs related to OCS energy activities that will require coordination between MMS and NOAA. These include the Comprehensive Inventory of OCS Oil and Natural Gas Resources (EPA2005 section 357), Appeals Relating to Offshore Mineral Development (EPA2005 section 382), the Coastal Impact Assessment Program (EPA2005 section 384), and Alternate Energy-Related Uses of the OCS (EPA2005 section 388). NOAA commends MMS for raising some of these mandates in the context of the 5-Year Program Plan.

Enclosed with this letter are NOAA's comments and suggestions on matters raised in your letter and in MMS' Federal Register notice announcing the start of the 5-Year program preparation process and intent to prepare an Environmental Impact Statement. The enclosure also lists NOAA's points of contact for coordinating with MMS on the 5-Year Program.

Thank you for the opportunity to provide these comments and NOAA looks forward to working with MMS on these activities.

Sincerely,

Richard W. Spinrad, Ph.D.
Assistant Administrator

Enclosures

**NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA)
COMMENTS ON
DEPARTMENT OF THE INTERIOR'S MINERALS MANAGEMENT SERVICE (MMS)
REQUEST FOR COMMENTS ON THE PREPARATION OF A NEW 5-YEAR OUTER
CONTINENTAL SHELF (OCS) OIL AND GAS LEASING PROGRAM FOR 2007-2012;
AND ON INTENT TO PREPARE AN ENVIRONMENTAL IMPACT STATEMENT
(EIS) FOR THE PROPOSED 5-YEAR PROGRAM**

September 21, 2005

REVIEW OF THE ENVIRONMENTAL IMPACT STATEMENT

The proposed 5-Year OCS Leasing Program will involve preparation of a Draft Environmental Impact Statement (DEIS) and Final Environmental Impact Statement (FEIS). As such, in accordance with NOAA's Administrative Order 216-6 for implementing the National Environmental Policy Act (NEPA) (2.02 a.6), NOAA's NEPA Coordinator has the responsibility for "coordinating NOAA's comments on EIS' prepared by other Federal agencies." Please provide the DEIS and FEIS to NOAA's NEPA Coordinator (point of contact provided below), who will coordinate review and response within NOAA.

COMPREHENSIVE INVENTORY OF OIL AND GAS RESOURCES BENEATH ALL WATERS OF THE OCS

MMS seeks comments on conducting the comprehensive inventory of OCS oil and gas resources mandated by the Energy Policy Act of 2005 (Pub. L. No. 109-58). NOAA supports MMS efforts to complete this task. NOAA is concerned, however, about using seismic technology for the inventory in or near sensitive areas of the marine environment such as national marine sanctuaries or where marine mammals and/or other endangered species may be located. NOAA requests that MMS consult with NOAA, particularly the National Marine Sanctuary Program and National Marine Fisheries Service's (NMFS') Protected Resources Program, prior to conducting the surveys. These consultations are important both to address any potential conflict with seismic surveys authorized by the Energy Policy Act and pre-existing prohibitions against oil or gas exploration by any person (including federal agencies) in most national marine sanctuaries, and to minimize or eliminate any adverse impacts on sanctuary or marine mammal resources or qualities, when conducting an inventory and assessment within or near the boundaries of any national marine sanctuary or near marine mammals.

The comprehensive inventory should also include long-term funding to support a consolidated compilation, data rescue, and data archiving effort for all reflection seismic data collected in United States waters. As stated in the Notice of Intent, a specific factor to be considered is existing geological characterizations of the regions. A key data set in evaluating the oil and gas potential of a site is seismic reflection profiles, many of which have been collected through the years. Seismic exploration requires the generation of loud, low-frequency sound in the water

column. Recent concerns on the impact of these operations on marine life, and marine mammals in particular, have led to greatly restricted permits for seismic exploration. NMFS' Office of Protected Resources is responsible for issuing these permits and enforcement of the Marine Mammal Protection Act. The restrictions on new seismic exploration make existing seismic reflection data extremely valuable, but there is no funded program for compiling and archiving these data; rather, there are scattered efforts across NOAA, USGS, and various academic efforts.

OTHER USES OF THE SEA AND SEABED

In MMS' notice under "Types of Information Requested," "General," number (5), MMS seeks information related to other uses of the sea and seabed, including fisheries, navigation, military activities, navigation lanes, deepwater ports and a variety of energy projects. Given the many existing uses of the OCS and the variety of marine protected areas, the increase in proposals for Liquefied Natural Gas (LNG) terminals and offshore wind farms, and new interest in offshore aquaculture facilities, NOAA believes that the federal agencies, in coordination with the coastal States, should develop a ocean management regime that is comprehensive and not based on disparate federal programs. MMS' 5-Year Program, combined with the need to establish the new alternative energy program under the OCS Lands Act, mandated by the Energy Policy Act, present a timely opportunity to develop a more comprehensive ocean management regime. By doing so, there could be greater predictability in determining appropriate and available locations for various OCS activities. Such upfront ocean planning could also help resolve user conflicts and could provide greater assurance for locating various types of energy projects. As resources allow, NOAA encourages MMS to use the 5-Year Program to begin this dialogue and NOAA should work in partnership with MMS on a comprehensive ocean management process.

For example, NOAA's National Marine Sanctuaries Program, Marine Protected Areas Program, Protected Resources Program and Fisheries Habitat Program can contribute information on specific resources of distinct areas of the oceans. NOAA's Coastal Management Program can provide a direct link to the State coastal management programs and CZMA-related issues. NOAA's Coastal Services Center can provide information related to coastal observing systems, remote sensing and other technological services. NOAA's Ocean Exploration, National Undersea Research Program, and NOAA's Pacific Marine Environment Laboratory's undersea vents programs may be able to contribute information about the "geographical, geological and ecological characteristics" (and archaeological information) as well as "environmental sensitivity and marine productivity" of regions of the OCS. NOAA's Coastal Management, National Estuarine Research Reserve and Sea Grant programs should also be able to contribute information regarding coastal communities and economies.

RELATIONSHIPS BETWEEN AFFECTED STATE COASTAL MANAGEMENT PROGRAMS AND OCS OIL AND GAS ACTIVITIES

Through the recent CZMA rulemaking, MMS informed NOAA that the 5-Year Program Plan is a preliminary activity that does not set forth a proposal for action and thus, coastal effects cannot

be determined at the 5-Year Program stage. If MMS still determines that coastal effects are not reasonably foreseeable at this preliminary stage, then MMS is not required to submit the 5-Year Program Plan to the coastal States for review under the Coastal Zone Management Act (CZMA) federal consistency provision. Accordingly, MMS' proposal for action would occur when MMS conducts a particular OCS oil and gas lease sale.

NOAA does recommend that MMS coordinate with the coastal States on the inventory of OCS oil and gas resources, on any rulemaking to implement the alternative energy provisions now contained in the OCS Lands Act as a result of the Energy Policy Act, and on any discussions regarding a possible comprehensive ocean management initiative. NOAA is available to assist MMS in coordinating with the coastal States on these matters.

MAGNUSON-STEVENSON ACT (16 U.S.C. §§ 1801 *et seq.*)

Background

The Magnuson-Stevens Act requires federal agencies to consult with the Secretary of Commerce, through NOAA, with respect to “any action authorized, funded, or undertaken, or proposed to be authorized, funded, or undertaken, by such agency that may adversely affect any essential fish habitat identified under this Act.” 16 U.S.C. § 1855(b)(2). Pursuant to the Magnuson-Stevens Act, each fishery management plan (FMP) must identify and describe Essential Fish Habitat (EFH) for the managed fishery, and the statute defines EFH as “those waters and substrates necessary to fish for spawning, breeding, feeding or growth to maturity.” 16 U.S.C. § 1853(a)(7) and § 1802(10). NOAA's regulations further define EFH adding, among other things, that “‘necessary’ means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem.” 50 C.F.R. § 600.10.

The regulations at 50 C.F.R. § 600.920 set forth the consultation process, which will allow NOAA to make a determination of the 2007-2012 OCS 5-Year Leasing Program's effects on EFH and provide conservation recommendations to MMS on actions that would adversely affect such habitat pursuant to section 305(b)(4)(A) of the Magnuson-Stevens Act. In the event MMS concludes an action may adversely affect EFH, the EFH assessment must contain “a description of the action; and analysis of the potential adverse effects of the action on EFH and the managed species; the federal agency's conclusions regarding the effects of the action on EFH; and proposed mitigation, if applicable.” 50 C.F.R. § 600.920(e)(3). Should a project result in substantial adverse impacts to EFH, an expanded EFH consultation may be necessary. *See id.* at § 600.920(i). In the event of an expanded EFH consultation, NOAA may encourage MMS to include additional information in the EFH assessment such as results of on-site inspections, views of recognized experts, a review of pertinent literature, an analysis of alternatives and any other relevant information. *See* 50 C.F.R. § 600.920(e)(4). Finally, depending on the degree and type of habitat impact, compensatory mitigation may be necessary to offset permanent and temporary effects of the project.

In addition to the process described above, NOAA's National Marine Fisheries Service (NMFS) and MMS entered into two agreements to facilitate the consultation requirements of the Magnuson-Stevens Act. By letter of March 12, 2002, NMFS, in consultation with MMS, developed modified procedures (*see* three enclosed letters from NOAA to MMS) for EFH consultations related to the preparation of NEPA documents. In addition, by letters of July 1, 1999, and August 12, 1999, (enclosed) our agencies consulted on a programmatic level to address EFH issues related to operational activities, including pipeline rights-of-way, plans for exploration and production, and platform removal in the Gulf of Mexico OCS. NMFS encourages MMS to consider using the programmatic process to help streamline and expedite any EFH consultations for the 2007-2012 leasing program. The EFH programmatic consultation requirements are described at 50 C.F.R. § 600.920(j). NMFS is available to work with MMS in developing programmatic consultation documents.

Magnuson-Stevens Act Recommendations

The new 5-Year OCS Oil and Gas Leasing Program will outline those areas available for lease sales for the period of 2007-2012. The planning areas identified for the 5-Year Program include areas designated as EFH under the Magnuson-Stevens Act. Although the 5-Year Program cannot predict specific oil and gas activities that will be undertaken, lease sale, exploration, development, and/or production activities ultimately resulting from the 5-Year Program likely will require EFH consultation as more specific plans are developed.

Therefore, NOAA recommends that the 5-Year OCS Oil and Gas Leasing Program EIS include discussions of the following:

1. Consultation requirements of the Magnuson-Stevens Act and implementing regulations.
2. How consultations for future, site-specific activities that may adversely affect EFH will be carried out. The discussion should account for the processes identified in the March 2002 agreement between NMFS and MMS on incorporating EFH consultation procedures into the NEPA process, and the July 1999 programmatic consultation developed between NMFS and the Gulf of Mexico OCS Region of MMS.
3. Use of the programmatic process to help streamline and expedite any EFH consultations.
4. A description of EFH and federally-managed fishery resources present in areas identified for potential lease sales and any expected adverse impacts to those resources.

Please note that EFH descriptions have changed since the development of the previous 5-Year Program. Please refer to NMFS' EFH website for questions regarding EFH description information: http://www.nmfs.noaa.gov/habitat/habitatprotection/efh/desc_ident.htm

METHANE HYDRATES

The Energy Policy Act contains several provisions on Methane Hydrates. MMS' Notice of Intent does not appear to include Methane Hydrates in the 5-Year Oil and Gas Leasing Program for 2007-2012. With the emergence of natural gas sources that might be recovered by methods other than drilling, the 5-Year Program should be expanded to cover potential new sources. Exploration and recovery methods used for Methane Hydrates could have significant impact on the sea bed, fisheries management, and change the demand for NOAA mapping products. MMS should state its intention to either include or exclude Methane Hydrates from the 5-Year Program, and provide a point of contact in MMS for further questions on Methane Hydrates.

NOAA POINT OF CONTACT FOR COORDINATING WITH MMS ON THE 5-YEAR OCS OIL AND NATURAL GAS PROGRAM FOR 2007-2012

Overall NOAA Contact:

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Commerce Representative to MMS Outer Continental Shelf Policy Committee
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NOAA's National Ocean Service (general NOS and CZMA):

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NOAA's National Ocean Service: (National Marine Sanctuary Program):

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NOAA's National Marine Fisheries Service:

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NOAA's NEPA Coordinator

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ENCLOSURES

Three letters from NMFS, as referenced in the Magnuson-Stevens Act section above, are enclosed with these comments.